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18 HARDWARE RESOURCES, INC.

19  
20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA  
22 OAKLAND DIVISION

23  
24 HARDWARE RESOURCES, INC.,

25 Plaintiff,

26 vs.

27 WEST COAST MOBILE

28 HARDWARE, INC., DOES 1 THROUGH 10,

Defendant.

Case No.: C07-03635

**JOINT CASE MANAGEMENT  
STATEMENT**

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**1. Jurisdiction and Service:**

33 a. This Court has exclusive subject matter jurisdiction under 28 U.S.C. §§ 1331 and  
34 1338(a) and 15 U.S.C. §1121 because this case arises under the Copyright Laws of the United  
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1 States, 17 U.S.C. § 101 *et seq.* (“Copyright Act”) and under the Trademark Act of 1946, *as*  
2 *amended*, 15 U.S.C. § 1051 *et seq.*

3 b. This Court also has subject matter jurisdiction under 28 U.S.C. § 1332 because  
4 the subject matter in controversy exceeds the value of \$75,000 and the parties are citizens of  
5 different states.

6 c. This Court has subject jurisdiction over the unfair competition claims herein,  
7 under the provisions of 28 U.S.C. § 1338(b), because these claims are joined with substantial and  
8 related claims under the trademark laws of the United States, 15 U.S.C. § 1051 *et seq.*

9 d. This Court has supplemental jurisdiction over the claims in this Complaint which  
10 arise under the laws of the State of California pursuant to 28 U.S.C. § 1337(a) since the State law  
11 claims are so related to the Federal claims that they form part of the same case or controversy  
12 and derive from a common nucleus of operative fact.

13 e. No issues exist regarding personal jurisdiction or venue.

14 f. All parties have been served.

15 **2. Facts:**

16 a. This is a trademark infringement, copyright infringement and unfair  
17 competition case. Plaintiff contends that it has adopted and used a family of trademarks, before  
18 Defendant, that feature a distinguishing and distinctive feature, namely, the prefix “COR” (the  
19 “HR COR Trademarks”) to sell its decorative wood carvings. Examples of the HR COR  
20 Trademarks include: CORA-1, CORA-2, CORA-3, CORB-1, CORB-2, CORB-3, CORBBW-1,  
21 CORC-1, CORC-2, CORC-3, CORE, CORF, CORI, CORI-1, CORK-1, CORK-2, CORK-3,  
22 CORMJ, CORMI, CORMW-1, CORP-1, CORP-2 and CORP-3. Plaintiff also contends to be the  
23 owner of at least eight (8) copyright registrations for original designs for decorative wood carvings  
24 that were created by Plaintiff (“Works”). Additionally, Plaintiff contends that as a result of  
25 substantial time, energy, money and effort, it has created a specific and unique market strategy to  
26 advertise and sell its goods under the HR COR Trademarks (“Market Strategy”).  
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1                   b.     Defendant distributes and resells decorative wood carvings to consumers.

2 Plaintiff complains that Defendant's conduct of copying, distributing, selling and importing at least  
3 ten (10) different works that are strikingly similar to Plaintiff's Works ("Defendant's Works")  
4 constitutes copyright infringement under the laws of the United States of the copyrights owned by  
5 Plaintiff in the Works. Defendant denies that Defendant's Works are "strikingly similar" to  
6 Plaintiff's Works. Defendant also denies that it copied anything from Plaintiff since, among other  
7 things, Defendant had no role in the design of Plaintiff's Works.

8                   c.     Defendant uses the following marks in association with some of its  
9 decorative wood carvings: CORB-A-1, CORB-A-2, CORB-A-3, CORB-A-4, CORB-A-5,  
10 CORB-A-6, CORB-A-7, CORB-A-8, CORB-A-9, CORB-A-10, CORB-A-11, CORB-G-1,  
11 CORB-G-2, CORB-G-3, CORB-G-5, CORB-BW-1, CORB-BW-4, CORB-T-1, CORB-T-2,  
12 CORB-T-3, CORB-T-4 and CORB-T-5 ("Defendant's Marks"). Plaintiff contends that  
13 Defendant's Mark is so similar to the HR COR Trademarks that Defendant's action of using  
14 Defendant's Mark to sell, offer for sale, distribution and advertisement of decorative wood  
15 carvings to consumers throughout California and the United States is likely to cause confusion,  
16 to cause mistake or to deceive consumers as to the source of origin of Defendant's goods.

17 Defendant denies that the HR COR Trademarks are protectable trademarks under applicable law.  
18 Defendant also denies that any confusion, mistake, or deception exists among consumers as a  
19 result of the "Defendant's Marks."

20                   d.     Plaintiff further contends that Defendant's uses market strategy that is  
21 nearly identical to Plaintiff's Market Strategy. For example, Defendant offers for sale a range of  
22 products that are nearly identical in type, design and dimension to Plaintiff under trademarks that  
23

confusingly similar to Plaintiff's HR COR Trademarks. Defendant denies all of Plaintiff's allegations concerning the "Market Strategy" claims.

e. *Principal Facts in Dispute.*

i. Validity of Plaintiff's Works and the validity of Plaintiff's HR COR Trademarks.

ii. Whether Defendant's Works are substantially similar to Plaintiff's Works.

iii. Whether the HR COR Trademarks have any secondary meaning or recognition as originating from a single source among the public.

iv. Whether the use of product designations "COR" or "CORB" for wooden corbel products can be considered distinctive where, among other things, other companies in the industry use the same or similar product designations schemes.

**3. Legal Issues:**

a. *Plaintiff's Trademark Infringement Claims*

i. Plaintiff contends that is the owner of a family of trademarks, the HR COR Trademarks" that incorporate the prefix "COR" that have been and are now recognized by the public and the trade as originating from a single source, namely, Plaintiff. Plaintiff further contends that its HR COR Trademarks are inherently distinctive and or have acquired secondary meaning. Defendant asserts that the HR COR Trademarks are not valid trademarks. Defendant also denies that they are distinctive in any way or that they have acquired any secondary meaning.

ii. Plaintiff further contends that Defendant's use of Defendant's Marks is a violation of 15 U.S.C. §1125(a)(1)(A) because Defendant has, on or in connection with goods,

namely, decorative wood carvings, used in commerce, words or other symbols, namely  
Defendant's Marks, that tend to falsely describe or represent goods which are likely to cause  
confusion, or to cause mistake or to deceive as to the affiliation, connection or association of  
Defendant with Plaintiff as to the source of origin, sponsorship or approval of Defendant's  
goods, services or commercial activities. Defendant denies these contentions.

iii. Plaintiff further contends that Defendant's use of Defendant's Marks is  
likely to cause confusion between Defendant and Plaintiff as a source of goods because  
Defendant's Marks and the HR COR Trademarks are both used for identical goods, marketed  
towards similar consumers, advertised in similar manners and through similar channels of trade.  
Defendant denies these contentions.

b. *Plaintiff's Copyright Infringement Claims*

i. Plaintiff contends that Defendant has infringed Plaintiff's copyrights  
under 17 U.S.C. §106 by distributing, selling and/or offering for sale ten (10) different infringing  
works that are a reproduction, derivative work, compilation or adaptation of Works owned by  
Hardware Resources. Defendant asserts that Plaintiff's Works are not valid copyrights. If they  
are deemed to be valid in any respect, Defendant denies that it infringes any validly  
copyrightable element of Plaintiff's Works.

c. *Plaintiff's Unfair Competition Claims*

i. Plaintiff contends that Defendant's conduct of mimicking Plaintiff's  
Market Strategy, using Defendant's Marks and any other reproduction, counterfeit, copy or  
colorable imitation of the HR COR Trademarks and copying the range and specific products  
offered for sale by Plaintiff constitutes unlawful, unfair and fraudulent business acts and  
practices in violation of California Business and Professions Code. §§17200 *et seq.* Defendant

denies that it mimics Plaintiff or its business methods in any way. Defendant denies all of  
Plaintiff's other contentions in this regard, as well.

4. **Motions:**

5. On October 5, 2007, Defendant filed "Defendant West Coast Mobile  
Hardware, Inc.'s Motion to Stay Proceedings" [Doc. #15]. Plaintiff has not filed its response to  
this Motion.
6. b. There are not other prior or pending motions.  
c. The parties anticipate that dispositive motions will be filed.

7. **Amendment and Pleadings:**

8. a. The Parties do not anticipate amending their pleadings at this time.  
9. b. Recommended cut-off date for filing any motion to amend the pleadings  
10. and/or to add additional parties is May 16, 2008.

11. **Evidence Preservation:**

12. a. Prior to the initiation of this litigation, Plaintiff's counsel advised Plaintiff  
13. of its duties to preserve evidence related to the issues in this action, to cease any document  
14. destruction programs or the destruction of e-mails, voicemails and other electronically-recorded  
15. materials that may be related to issues in this action. All pertinent employees of Plaintiff have  
16. been advised to preserve evidence and are believed to be doing so accordingly.  
17. b. Defendant's counsel has advised Defendant of its obligations to preserve  
18. evidence.

19. **Disclosures:**

20. a. On October 12, 2007, Plaintiff served Defendant with its Rule 26(a)(1)  
21. Initial Disclosures. Plaintiff has fully and timely complied with its initial disclosure  
22. requirements of Fed. R. Civ. P. 26.

b. Defendant's Rule 26(a)(1) Initial Disclosures will be served on October 15, 2007.

## **8. Discovery:**

- a. Except Plaintiff's Initial Disclosures, no discovery has been taken to date.
  - b. Scope of Anticipated Discovery: Plaintiff contemplates written discovery of Defendant, several third parties and potential expert witnesses to determine: knowledge of Plaintiff, Plaintiff's "Works", the "HR COR Trademarks" and market Strategy; Defendant's creation, sales, marketing, distribution and of its "Accused Corbel Designs" and profits associated therewith; all redesigns of Accused Corbel Designs"; Defendant's use and creation of "Defendant's Marks"; tion, advertising, marketing and promotion of goods or services in association with Marks" by Defendant or under its authority and all profits associated therewith; between Plaintiff and Defendant due to Defendant's use of "Defendant's Marks"; e "Defendant's Marks"; the quality of goods sold, advertised or marketed by defendant's reputation in the wood carving industry; Defendant's process of what type of products to advertise, market and sell; how Defendant advertises, sells its products; corporate and business history of Defendant; business and ationship between Defendant and Pride Industrial, LLC ("Pride") or Jianguo . d/b/a Pacific Industries. Discovery will also be required as to Defendant's

**9. Class Actions:** This matter is not a class action.

**10. Related Cases:** There are two (2) other pending lawsuits that are arguably related.

Plaintiff has filed a suit in the Southern District of Ohio against Defendant's supplier, Pride, and Jianguo Industries, Inc.; Hardware Resources, Inc. v. Pride Industrial, LLC et al., 1:07 CV 244

1 (S.D. Ohio 2007). Defendant contends that the Ohio lawsuit is the primary basis for Defendant's  
2 Motion to Stay. Plaintiff has also filed another lawsuit in the Eastern District of California  
3 against another one of Pride's customers, Charles McMurray Co.; Hardware Resources v.  
4 Charles McMurray, 1:07-CV-01004-AWI (E.D. Cal. 2007). Plaintiff contends that the cases  
5 encompass similar products, Works and the HR COR Trademarks. Defendant contends that the  
6 cases encompass identical products, Works and the HR COR Trademarks.

7 **11. Relief:**

8 a. Defendant be preliminary and permanently enjoined from reproducing Plaintiff's  
9 Works, from preparing adaptations or derivative works based on the Works or by distributing  
10 copies of the Works to the public for sale.

11 b. Defendant be preliminarily and permanently enjoined from using Defendant's  
12 Marks or any other reproduction, counterfeit, copy or colorable imitation of the HR COR  
13 Trademarks in any matter likely to cause confusion, to cause mistake or to deceive.

14 c. Defendant be preliminarily and permanently enjoined from engaging in acts  
15 constituting unfair competition in violation of California Business and Professions Code  
16 §§17200 *et seq.*

17 d. Pursuant to 15 U.S.C. §1117, Defendant account and pay over to Plaintiff all  
18 damages sustained by Plaintiff and profits realized by Defendant as a result of Defendant's  
19 unlawful acts alleged herein and that such profits be increased as provided by law and damages  
20 be trebled for the willfulness of Defendant's acts.

21 e. Pursuant to 17 U.S.C. §504, Plaintiff is entitled to receive its actual damages and  
22 Defendant's profits as provided by 17 U.S.C. §504, statutory damages under 17 U.S.C. §504(c)  
23 and attorneys fees and costs pursuant to 17 U.S.C. §505.

24 **12. Settlement and ADR:**

25 a. The Parties are currently discussing settlement, a possible ADR plan and  
26 compliance with ADR L.R. 3-5.  
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1           b. In order for Plaintiff to make a settlement offer, it intends to seek  
2 discovery on at least the following subjects:

- 3           - Documents and/or testimony sufficient to identify all distributors  
4           of Defendant who have sold or offered for sale any of the  
infringing products
- 5           - Documents and/or testimony related to Defendant's creation of the  
6           infringing products, the creator of the infringing work and  
7           Defendants' relationship to the creator of the infringing works;
- 8           - Documents and/or testimony related to Defendant's access to  
9           Plaintiff's copyrighted designs;
- 10          - Documents sufficient to identify all products sold, offered for sale  
11          and otherwise transferred by Defendant to any third party that  
incorporate Plaintiff's copyrighted designs, the HR COR  
12          Trademarks and all designs and marks sold by Defendant similar  
thereto;
- 13          - Documents and/or testimony sufficient to identify Defendant's  
14          entire inventory of the infringing products over a space of time  
from at least 2004 to the present;
- 15          - Documents and/or testimony sufficient to identify all infringing  
16          products sold, where they were sold and who they were sold to;
- 17          - Documents and/or testimony sufficient to identify all  
18          manufacturers of the infringing products;
- 19          - Documents and/or testimony sufficient to provide an accounting of  
20          Defendant's profits from all sales of the infringing products;
- 21          - Documents and/or testimony sufficient to identify the quality of  
22          the infringing products;
- 23          - Documents and/or testimony sufficient to identify all offers for  
24          sale of infringing products and to whom such offers were made;  
and
- 25          - Document and/or testimony sufficient to address issues of  
26          willfulness.

1       **13. Consent to Magistrate Judge For All Purposes:** The Parties do not consent to have a  
2 magistrate judge conduct all further proceedings including trial and entry of judgment.

3       **14. Other References:** This case is not suitable for reference to binding arbitration, a special  
4 master or the Judicial Panel on Multidistrict Litigation.

5       **15. Narrowing of Issues:** The Parties do not believe that any of the issues can be narrowed  
6 at this time.

7       **16. Expedited Schedule:** The Parties do not believe that this type of case can be handled on  
8 an expedited basis with streamlined procedures.

9       **17. Scheduling:**

- 10           a.      Recommended date for identifying primary experts: February 15, 2008
- 11           b.      Recommended date for producing primary expert reports: March 15, 2008
- 12           c.      Recommended date for identifying rebuttal experts: March 1, 2008
- 13           d.      Recommended date for producing rebuttal expert reports: July 1, 2008
- 14           e.      Recommended discovery cut-off date: August 15, 2008
- 15           f.      Recommended dispositive motion deadline: October 15, 2008
- 16           g.      Recommended date for final pretrial conference: November 14, 2008
- 17           h.      Recommended date for trial: December 18, 2008

18       **18. Trial:** The case will be tried to a jury. The Parties estimate that the trial should last  
19 between four (4) and six (6) days.

20       **19. Disclosure of Non-party Interested Entities or Persons.** Plaintiff filed its "Certificate  
21 of Interested Entities or Persons" on October 12, 2007. Plaintiff states that 2003 Riverside  
22 Capital Appreciation Fund, L.P., a Delaware limited partnership, owns ten percent (10%) or  
23 more of the common stock of Plaintiff Hardware Resources, Inc.

24       **20. Other Matter:** The parties believe that a Joint Protective Order will be required to  
25 protect sensitive business information of the parties during discovery and trial of this case. The  
26  
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parties anticipate negotiating the terms of such an order and submitting it to the Court in about thirty (30) days.

**21. Attestation:** Plaintiff attests that the content of this document is acceptable by all parties required to sign the document.

Dated: October 12, 2007. Respectfully submitted,

Respectfully submitted,

/s/ George R. Schultz  
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*Pro Hac Vice*  
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HARDWARE RESOURCES, INC.

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WEST COAST MOBILE HARDWARE, INC.

## **CERTIFICATE OF SERVICE**

I hereby certify that on October 12, 2007, I electronically filed the Joint Case Management Statement with the clerk of the court for the U.S. District Court, Northern District of California, using the electronic case filing system of the Court. The electronic case filing system sent a “Notice of Electronic Filing” to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

Mark H. Harris      harris.law@att.net

A true and correct copy of the Joint Case Management Statement was served upon the persons listed below in the manner indicated on October 12, 2007.

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/s/ George R. Schultz

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George R. Schultz